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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SANTA CLARA**

14 AMERICAN FEDERATION OF STATE,  
15 COUNTY, AND MUNICIPAL EMPLOYEES,  
16 LOCAL 101, on behalf of its members,

17 Plaintiff and Petitioner,

18 v.

19 CITY OF SAN JOSÉ and DEBRA FIGONE in  
20 her official capacity as City Manager,

21 Defendants and Respondents,

22 THE BOARD OF ADMINISTRATION FOR  
23 THE FEDERATED CITY EMPLOYEES  
24 RETIREMENT PLAN,

25 Necessary Party In Interest.

ENDORSED

2012 JUL -5 3:21

Cliff H. Hansen, Clerk of the Superior Court  
County of Santa Clara, California

S. Gancey-Alexander  
Deputy Clerk

Case No. 112CV227864

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND PETITION  
FOR WRIT OF MANDAMUS**

1. Unconstitutional Impairment of Contract  
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
2. Unconstitutional Bill of Attainder  
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
3. Unconstitutional Taking of Private Property  
(Cal. Const. Art. I § 19 & Civ. Code § 52.1)
4. Unconstitutional Taking of Private Property  
Without Due Process  
(Cal. Const. art. I § 7 & Civ. Code § 52.1)
5. California Pension Protection Act  
(Cal. Const. Art. XVI § 17 & Civ. Code § 52.1)
6. Violation of Constitutional Right to Petition  
(Cal. Const. Art. I §§ 2 & 3 & Civ. Code § 52.1)
7. Illegal *Ultra Vires* Tax, Fee or Assessment  
(Cal. Const. Art. I, § 7 & Civ. Code § 52.1)
8. Promissory Estoppel and Equitable Estoppel
9. Request for Declaratory Relief  
(Code of Civ. Pro. § 1060)
10. Request for Injunctive Relief  
(Code of Civ. Pro. §§ 525, 526 & 526(a))
11. Petition for Writ of Mandate  
(Code of Civ. Pro. § 1085)

1 Plaintiff American Federation of State, County, and Municipal Employees, Local 101 alleges  
2 as follows:

### 3 I. INTRODUCTION

4 1. Plaintiff and petitioner ("Plaintiff" or "Petitioner") brings this suit for declaratory,  
5 injunctive, and writ relief in order to declare unconstitutional under the California Constitution the  
6 "Sustainable Retirement Benefits and Compensation Act" ("Act" or "Measure B"), approved by the  
7 electorate of the City of San José ("City") on June 5, 2012, and to bar its implementation by  
8 defendants and respondents ("Defendants" or "Respondents").

9 2. Plaintiff Local 101 of the American Federation of State, County, and Municipal  
10 Employees ("AFSCME" or "Union") is the representative of certain groups of miscellaneous  
11 employees employed by the City and who are members of the City's Federated City Employees  
12 Retirement Plan (collectively referred to herein as "miscellaneous employees," "employees," or  
13 "members").

14 3. Under the California Constitution, public employee pension benefits are deferred  
15 compensation, and a public employee has a constitutionally-protected contractual and property right  
16 to receive such benefits under the terms and conditions in effect at the time such employee accepts  
17 employment.

18 4. A public employee's right to the benefits established under a pension plan vests upon  
19 commencing employment, because the right to such benefits represents a forbearance of wages or  
20 other compensation otherwise immediately earnable through the employee's ongoing service.

21 5. These rights are vested and cannot be reduced or eliminated without impairing this  
22 constitutionally-protected contractual obligation and property right.

23 6. Under California law, a right to retiree health benefits and/or benefits in the form of a  
24 post-retirement cost of living adjustments ("COLA") may also vest by implication. The resulting  
25 contract and property right to receive these forms of benefits, on terms substantially equivalent to  
26 those offered by the public employer, similarly arises upon acceptance or continuation of  
27 employment. Once vested, they cannot be reduced or eliminated without impairing this  
28 constitutionally-protected contractual obligation.

1           7.     In a memorandum dated December 1, 2011, City Mayor Chuck Reed submitted to the  
2 City Council a series of recommendations. In relevant part, he recommended that the City Council  
3 refrain from declaring a "Fiscal and Service Level Emergency," and further recommended the City  
4 Council adopt a resolution calling for a municipal election on June 5, 2012, for the purpose of placing  
5 on the ballot an amendment to the City Charter's ("Charter") provisions governing City employee  
6 retirement security.

7           8.     By memorandum dated February 21, 2012, City Manager Debra Figone proposed to  
8 the Mayor and City Council an Act providing for such amendments to the City Charter, authorizing  
9 promulgation of ordinances for the purpose of, *inter alia*, reducing City employee retirement security  
10 and reducing wages for City employees who "choose" to retain the level of retirement security  
11 promised to them (and for which they have contributed a portion of their wages). Attached to the  
12 memorandum were the terms of the Act proposed for placement on the ballot.

13           9.     The proposal also called for convening a June 5, 2012 special municipal election for  
14 the purpose of placing the Act on the ballot for referendum (as amendments to the City Charter must  
15 be approved by the City's electorate).

16           10.    On March 6, 2012, the City Council adopted the proposal and directed placement of  
17 the Act attached thereto on the June 5, 2012 Ballot.

18           11.    The Act was subsequently designated "Measure B" on the ballot (hereinafter referred  
19 to as "Measure B.")

20           12.    On June 5, 2012, the City electorate passed Measure B by referendum.

21           13.    On or about July 5, 2012, the City Clerk certified the results of the June 5 election,  
22 including passage of Measure B.

23           14.    Among other things, Measure B purports to amend the City Charter such that vested  
24 employees' pension benefits will be reduced and additional obligations on the part of employees will  
25 be incurred with respect to the City's obligation to fund the retirement security it has promised.

26           15.    As applied to current employees participating in the Federated City Employees  
27 Retirement System, Measure B violates the California Constitution because it substantially impairs  
28

1 the affected employees' right to retirement benefits that vested when they commenced employment  
2 and/or continued their employment with the City.

3 16. For example, Measure B violates the California Constitution with respect to current  
4 employees because it, *inter alia*:

5 a. Reduces and eliminates portions of employee retirement benefits that are or have  
6 become vested;

7 b. Imposes conditions subsequent on the right to receive retirement benefits already  
8 earned;

9 c. Is an unconstitutional bill of attainder, as it shifts the burden of financing public debt  
10 upon a small class of private parties;

11 d. Constitutes an unconstitutional taking of private property for public use without  
12 providing the affected employees with just compensation;

13 e. Constitutes an unconstitutional taking of private property for public use without  
14 affording the affected employees with substantive due process;

15 f. Is an unconstitutional retroactive law as it subjects employees to liabilities previously  
16 incurred by the City, and obligates active employees to fund liabilities previously incurred by the  
17 City with respect to its retiree health obligations;

18 g. Is unconstitutional because it violates the "California Pension Protection Act";

19 h. Violates employee-members' constitutional right to petition the courts by imposing a  
20 penalty on employee-members who successfully challenge the legality of the Act through a "poison  
21 pill" provision; and

22 i. Imposes an illegal and improper tax.

23 17. Additionally, the City should be prohibited from implementing Measure B pursuant to  
24 the common law doctrines of promissory estoppel and equitable estoppel.

25 18. Measure B, if implemented, violates the law as summarized above and further detailed  
26 in the allegations below.

27 //

28 //

## II. VENUE/JURISDICTION

19. Petitioner seeks declaratory relief pursuant to California Code of Civil Procedure section 1060.

20. Petitioner seeks injunctive relief pursuant to Code of Civil Procedure sections 526 and 527 and Civil Code section 52.1.

21. This court has jurisdiction over the writ relief requested in this proceeding under Code of Civil Procedure section 1085.

22. This action is brought under, and seeks to rectify violations of, the laws of the State of California including its Constitution.

23. All parties exist and reside within the County of Santa Clara, and the acts and/or omissions complained of took place within the County of Santa Clara, making this Court the appropriate venue for this action.

## III. THE PARTIES

24. Petitioner and Plaintiff AFSCME Local 101 is an unincorporated membership association, and a labor organization as defined by Government Code section 3501.

25. AFSCME Local 101, including its affiliated Municipal Employees' Federation ("MEF") and Confidential Employees' Organization ("CEO"), is the recognized exclusive bargaining representative for certain non-managerial employees of the defendant and respondent City of San José.

26. AFSCME sues on behalf of, and in the interest of, its members employed by the City. Such members are miscellaneous employees and are members of the City's Federated City Employees Retirement System.

27. Measure B purports to affect and substantially impair the rights of AFSCME's members as alleged herein.

28. Defendant and Respondent City of San José is a chartered municipal corporation, and an instrumentality of the State of California, which operates under the authority of the California Constitution and the San José City Charter.

29. Defendant and respondent Debra Figone is sued in her official capacity as City

1 Manager of the City of San José. The City Charter designates the City Manager as the City's chief  
2 administrative officer responsible to the City Council for the administration of the City's affairs  
3 placed under her charge. Ms. Figone's duties include but are not limited to executing all laws, City  
4 Charter provisions, and any acts of the City Council which are subject to enforcement by her  
5 subordinates. Executing Measure B is amongst her duties.

6 30. The Board of Administration for the Federated City Employees Retirement System  
7 ("Board") is the Necessary Party in Interest in this case and is appointed by the City Council. The  
8 Board is responsible for managing, administering, and controlling the Federated City Employees  
9 Retirement System and the retirement fund. (California Constitution, art. XVI, sect. 17; San Jose  
10 Municipal Code ("SJMC") § 3.28.100.) Action on the part of the Board is required in order to bring  
11 the Federated City Employees Retirement System within compliance with Measure B.

#### 12 IV. FACTUAL ALLEGATIONS

##### 13 A. THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM

14 31. Prior to Measure B, and at all times relevant hereto, the City Charter provided for a  
15 defined benefit pension plan, and set forth a duty on the part of the City to "create[], establish[] and  
16 maintain[] ... a retirement plan or plans for all [of its] officers and employees...." (Charter § 1500.)

17 32. The Charter further prescribed the minimum benefits due to its non-excluded  
18 miscellaneous employees and required the City Council to provide for pension and other benefits  
19 through ordinance. (Charter § 1505.) It also stated that in its discretion, the City Council "may grant  
20 greater or additional benefits." (Charter § 1505(e).)

21 33. Pursuant to duly-enacted ordinances, Defendant adopted and established a Federated  
22 City Employees Retirement System providing for certain benefits for covered employees. Such  
23 ordinances, and other laws of the City and State, further provide for the establishment of a Retirement  
24 Board to oversee and administer pension benefits for covered employees.

25 34. The terms and conditions of the plan of benefits prescribed by, and adopted under,  
26 these auspices is hereinafter referred to as the "Retirement System," "Federated System,"  
27 or "System."  
28

1           35. Generally, full-time miscellaneous employees become members of the System upon  
2 acceptance of employment with the City.

3           36. Prior to Measure B, the System was funded by contributions from both members and  
4 the City under the proportions set forth in the Charter. However, member or employee contributions  
5 were never assessed or required with respect to the System's unfunded liabilities; rather members  
6 only were responsible for contributing towards the "normal cost"<sup>1</sup> of their annually-earned benefits.

7           37. Therefore, prior to Measure B, the City Charter provided that the funding of benefits  
8 under the system was to be computed annually with respect to the normal cost of each employee-  
9 member's annual benefit accrual: the Charter and City Ordinances provide that "any [non-excluded]  
10 retirement fund, system or plan for or because of current service or current service benefits ..., in  
11 relation to and as compared with contributions made by the City for such purpose, shall not exceed  
12 the ratio of three (3) for [miscellaneous] employees to eight (8) for the City." (Charter § 1505(c); §  
13 SJMC 3.28.710.)

14           38. Under the System, member contributions are made only on account of current service  
15 rendered (SJMC § 3.28.710), excepting limited circumstances – not relevant here – where employees  
16 may make additional contributions to purchase "prior service credit"<sup>2</sup>. (SJMC §§ 3.28.730, 3.28.740.)  
17 Again, members are not and have never been required to make contributions into the System to cover  
18 their own or others' unfunded liabilities.

19           39. Instead, under the Charter, the City has been responsible for ensuring payment of  
20 shortfalls between the plan's assets and the actuarially-determined liability for all benefits owed by  
21 the System. Such difference, actuarially determined, represents the System's "unfunded liability,"  
22 which fluctuates depending on the System's investment and demographic experience.

23           40. While the City is required to make current service and limited prior service  
24 contributions into the retirement system on behalf of members (SJMC §§ 3.28.850, 3.28.890), it is  
25 and has been obligated to cover the unfunded liabilities of the retirement system (SJMC § 3.28.880.)  
26  
27

28 <sup>1</sup> The normal cost is the actuarially determined cost of new benefits earned each year by active participants.

<sup>2</sup> Meaning the purchase of pension credit for years of City service that did not qualify for pension membership

1           41.     The form of benefit promised by the City and provided under the System to  
2     Petitioner's members was a defined benefit consisting of 2.5% of compensation multiplied by the  
3     particular employee's years of employment with the City for which the employee is eligible for credit  
4     under the System (i.e. "covered" or "credited" service). The defined benefit also included a  
5     guaranteed cost of living adjustment, or "COLA," consisting of a 3% annual increase in the pension  
6     benefit.

7           42.     Although the right to earn and receive such a defined benefit accrues upon accepting  
8     and continuing employment under the System, members become eligible to receive such defined  
9     benefit on the earlier of reaching age 55 and completing five years of covered service, or completing  
10    a full 30 years of service regardless of age. (SJMC 3.28.1110(A).)

11          43.     Under the System, members who become disabled and unable to perform their duties  
12    are entitled to a disability retirement benefit.

13          44.     The City and the System also provide for payment and funding of health benefits for  
14    Federated System retirees.

15          45.     To qualify for retiree health benefits, a member must retire under the System and have  
16    at least fifteen years of service or receive an allowance that is at least 37.5% of final compensation.  
17    Furthermore, a retiree may be eligible for benefits if he/she "[w]ould be receiving an allowance equal  
18    to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not  
19    apply." (SJMC 3.28.1950(A)(3).) If a retiree qualifies for the plan, the retirement system pays one  
20    hundred percent of the lowest cost plan that is available to active City employees. If a retiree does  
21    not choose the lowest cost plan, he/she must pay the difference between that premium and the  
22    premium for the lowest cost plan.

23          46.     To qualify for retiree dental benefits, a member must retire for disability or service and  
24    either have credit for five years of service or more or receive an allowance that is at least 37.5% of  
25    final compensation. Furthermore, a retiree is eligible for benefits if he/she "would be receiving an  
26    allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation  
27    offset ... did not apply...." If a retiree qualifies for the plan, the retirement fund pays one hundred  
28    percent of that members' premiums to an eligible dental plan.



47. The City and the System also provide for a Supplemental Benefit Retiree Benefit Reserve (“SRBR”) for the benefit of retired members, survivors of members, and survivors of retired members retired members. If the balance remaining in the Plan’s income account [after payment of administrative costs and expenses of the retirement System for the applicable fiscal year] is greater than zero, the [B]oard ... transfer[s] ten percent of the excess earnings to the [SRBR], and [] transfer[s] the remaining ninety percent of the excess earnings to the general reserve.” (SJMC 3.28.340(D).) Furthermore, interest on these funds and excess funds are deposited in the SRBR.

## B. MEASURE B

48. Measure B seeks to reduce the retirement security of Petitioner's members while simultaneously shifting obligations and debts already incurred by the City unto a small class of individuals, including Petitioner's members.

49. Measure B further seeks to punish members who either challenge its legality or resist the reduction of the retirement benefit to which they are vested and entitled. Specifically, Section 1514-A of Measure B provides that if any of Measure B's terms are "determined to be illegal, invalid or unenforceable as to Current Employees[,]" current employees' salaries shall be reduced by "an equivalent amount of savings."

### Suspension and Reduction of COLA Provision

50. With respect to the COLA component of the System's defined retirement benefit, Measure B authorizes the City Council to eliminate or "suspend" payment of the COLA. By its terms Measure B provides the City Council with discretion to suspend the COLA for a period of five years and thereafter may reduce by half the COLA benefit, or continue the suspension.

51. Prior to Measure B, miscellaneous employees enjoyed a vested right to an annual three percent increase to their pension benefit after retirement. This served the purpose of ensuring that a retiree's pension kept pace with inflation. (SJMC § 3.400.160.) (It should be noted that System members do not participate in the federal Old Age, Survivor and Disability Insurance (OASDI) program administered by the Social Security Administration, which of course includes a COLA component).

1           52.     The COLA component of the System's retirement benefit has been funded by  
2 employee and City contributions. Specifically, the normal cost of the COLA component is funded by  
3 contributions from members and the City on the same three to eight ratio basis as has been applied to  
4 the primary pension benefit. (SJMC § 3.44.00.)

5           53.     Measure B, however, provides that the City Council is authorized to suspend COLA  
6 payments "in whole or in part" until (and if) "[the City Council] determines that the fiscal emergency  
7 has eased." (Section 1510-A). Upon information and belief, such provision applies equally to current  
8 employees who retire prior to the adoption of any such resolution suspending the COLA.

9           54.     Measure B further provides, that "in the event" the City Council "restores all or part of  
10 the COLA" it shall not exceed 3% for "current employees" or "1.5% for Current Employees who  
11 opted into the VEP" (*Id.*), and it may only be restored prospectively.

12          55.     Measure B therefore reduces vested retirement benefits in the form of permitting  
13 elimination and reduction of COLA for both current and future retirees.

14           *Elimination of the Supplemental Benefit Retiree Benefit Reserve ("SRBR")*

15          56.     Measure B eliminates of the System's Supplemental Benefit Retiree Benefit Reserve  
16 ("SRBR").

17          57.     Prior to Measure B, in the event the System had a balance in its operating account  
18 after payment of administrative costs and expenses of the retirement System for the applicable fiscal  
19 year, the Board of Retirement was required to "transfer ten percent of the excess earnings to the  
20 [SRBR], and [to] transfer the remaining ninety percent of the excess earnings to the general reserve."  
21 (SJMC 3.28.340(D).) Furthermore, interest on funds and excess funds were deposited in the SRBR.

22          58.     Funds were held in the SRBR for the benefit of retired members, survivors of  
23 members, and survivors of retired members.

24          59.     Measure B eliminates the SRBR and transfers the assets held in such account to the  
25 System's general fund.

26           *Changes to the Obligation to Fund City Employee Retirement Programs*

27          60.     Measure B transfers to employees the responsibility for funding, in part, the System's  
28 previously-incurred unfunded liability. Such an obligation has not, heretofore, existed on the part

1 of System members or employees. As set forth above, the Municipal Code and Charter have  
2 exclusively placed responsibility on the City for any such incurred liabilities.

3 61. Specifically, in order to retain their vested entitlement to receive their pension  
4 benefits, members must personally agree to assume a *pro rata* portion of up to 50% of the City's  
5 obligation for the System's unfunded liabilities, in addition to their obligation to make payment of the  
6 normal cost of their annual accrued benefits.

7 62. The obligation to assume half of the City's responsibility for financing the System's  
8 unfunded liabilities has been computed by the City to equal approximately 16% of gross pay and,  
9 accordingly, Measure B caps this obligations 16% of gross pay.

10 63. Employees who decline the obligation to assume the City's debt in this manner, under  
11 Measure B, are placed into a "Voluntary Election Plan" or "VEP." Such employees, on a going  
12 forward basis, are subject to a dramatic reduction in their vested right to receive their pension benefits  
13 and promised level of retirement security.

14 64. Specifically, with respect to employees who decline to assume the City's obligation  
15 for the System's unfunded liabilities, the VEP imposes a lower accrual rate for benefits; imposes a  
16 later retirement age; increases the years-of-service retirement eligibility gradually each year,  
17 indefinitely and with no limit; reduces and caps the annual COLA; redefines the term "final  
18 compensation" to exclude the member's compensation that would otherwise have been included in  
19 computing the member's pension; and redefines to the member's disadvantage the criteria applied to  
20 disability retirements.

21 65. Measure B's VEP does not present members with a "voluntary" option, as the exercise  
22 of such choice is neither volitional nor free from coercion or duress.

23 66. Further, although accepting imposition of the VEP may be more advantageous than  
24 remaining in the System as amended by Measure B, both "options" require members to accept a  
25 reduction in their vested right to receive promised retirement benefits upon retirement.

26 67. Prior to Measure B, the City's miscellaneous employees had the right to retire on the  
27 earlier of reaching age fifty-five or working for the City for thirty years. (*See, e.g.,* SJMC §  
28 3.28.1110(A).)

1           68.     Specifically, a member's annual service retirement "allowance" – or benefit – was  
2     computed with respect to his/her final compensation, which was defined as the "highest average  
3     annual compensation earnable by the member during any period of twelve consecutive months of  
4     federated city service...." (SJMC § 3.28.030.11.) Such a full service retirement benefit was  
5     computed as 2.5% of such final compensation per year of service. Furthermore, one year of service  
6     was defined as "1,739 or more hours of federated city service rendered by the member in any  
7     calendar year." (SJMC § 3.28.6809(B).)

8           69.     Employees who are unable to shoulder the City's obligation for the System's  
9     unfunded liabilities must accept, under the VEP, a reduced benefit accrual rate of two percent of final  
10    compensation; an increased retirement age of sixty-two; an ever-increasing years-of-service  
11    retirement (which increases by six months each year, starting in July of 2017); a reduced COLA of  
12    1.5%; "final compensation" redefined as "the average annual pensionable pay of the highest *three*  
13    *consecutive years* of service"; and an increase in the definition of a year of service to 2,080 hours.  
14    (Section 1507-A (emphasis added).)

15           *Changes to the System's Disability Retirement Benefit*

16           70.     Measure B redefines the term "disability" with respect to current employees in a  
17    manner that reduces such employees' eligibility for a disability retirement under the System. It  
18    further reduces the right to a disability retirement benefit for employees required to enroll into the  
19    VEP.

20           71.     Specifically, Measure B reduces the maximum benefit that a disabled retiree may  
21    receive, reduces the categories of compensation for purposes of computing the benefit; and reduces  
22    the annual COLA.

23           72.     Prior to Measure B, a miscellaneous employee qualified for a "disability retirement" if  
24    his/her "disability ... render[ed] the member physically or mentally incapable of continuing to  
25    satisfactorily assume the responsibilities and perform the duties and functions of the position then  
26    held by him and of any other position in the same classification of positions to which the city may  
27    offer to transfer him, as determined by the retirement board on the basis of competent medical  
28    opinion." (SJMC § 3.28.1210.) Prior to Measure B, disabled employees who could fill such

1 positions were nevertheless entitled to a disability retirement if no such position existed or was open.

2 73. Further, members who retire because of a service-connected disability were, prior to  
3 Measure B, permitted an "annual allowance" of no less than forty percent of their compensation plus  
4 2.5% for each year of service beyond sixteen, to a maximum of seventy-five percent of the member's  
5 final compensation. (SJMC § 3.28.1280.)

6 74. With respect to non-service connected disabilities, miscellaneous employees who  
7 became members of the System prior to September 1, 1998, were eligible for a non-service connected  
8 disability retirement allowance equal to the normal retirement allowance less half a percent for each  
9 year the member is younger than age fifty-five. All other members receive an allowance of twenty  
10 percent of final compensation plus two percent of final compensation for each year of service in  
11 excess of six years, but less than sixteen years, plus 2.5% of final compensation for each year of  
12 service credit in excess of sixteen years, up to seventy-five percent of the member's final  
13 compensation. (SJMC § 3.28.1300.)

14 75. Prior to Measure B, disability retirees received an annual three percent COLA. (SJMC  
15 §§ 3.44.010, 3.44.160.)

16 76. Measure B substantially impairs both the eligibility to receive and the substantive  
17 benefits provided under the System's disability retirement provisions.

18 77. Specifically, Measure B redefines the term "Disability" for purposes of restricting  
19 eligibility to receive a disability retirement. Measure B narrows the definition to apply only to  
20 employees whose disability "has lasted or is expected to last for at least one year or to result in death"  
21 and "cannot perform any other jobs described in the City's classification plan because of his or her  
22 medical condition(s)... regardless of whether there are other positions available at the time a  
23 determination is made." (Section 1509-A (emphasis added).)

24 78. Thus, under Measure B, a member who suffers debilitating injury may be denied a  
25 disability benefit if she can theoretically perform the functions of any classification, even if there is  
26 no vacancy available to accommodate such employee.

27 79. Measure B also reduces the disability benefit provided under the System.

28 Specifically, service-connected disability retirees receive fifty percent "of the average annual

1 pensionable pay of the highest three consecutive years of service.” Further, employees become  
2 eligible for non-service connected disability retirement benefits after five years of service with the  
3 City, computed at two percent times final compensation, defined as the average highest three  
4 consecutive years. Such an employee may receive a minimum and maximum non-service connected  
5 disability retirement of twenty percent and fifty percent, respectively. (Section 1507-A(e).)

6 80. Under Measure B the disability retirement COLA is reduced to 1.5%.

7 81. Furthermore, Measure B shifts the responsibility for determining eligibility for  
8 disability retirement benefits from the Board to “an independent panel of medical experts” subject to  
9 a “right of appeal to an administrative judge.”

10 Funding of the City’s Retiree Health Obligations

11 82. Pursuant to the SJMC, members of the Federated System who satisfy certain  
12 conditions related to service or disability retirement are entitled to receive retiree medical and dental  
13 benefits. (SJMC §§ 3.28.1950, 3.28.2000.)

14 83. Members of the System enjoy a right to retiree healthcare benefits that is vested by  
15 explicit or implied contract. Indeed, employees contribute to the cost of retiree health through their  
16 own payroll deductions.

17 84. Retiree healthcare benefits are a form of deferred compensation for present service.

18 85. Retiree healthcare benefits are also provided as a result of written agreements between  
19 the City and labor organizations, including Petitioner.

20 86. Prior to Measure B, AFSCME members have contributed to their retiree health  
21 insurance on a one-to-one basis with the City.

22 87. Prior to Measure B the City has not, and did not, make contributions at a level  
23 sufficient to fully prefund its retiree health obligations. Rather, the City paid for its retiree health  
24 obligations through a “pay-as-you-go” method, utilizing both its own and employee contributions  
25 towards providing health benefits to its retirees. Where such amounts were insufficient to pay the  
26 city’s health obligations, the City was responsible for such unfunded amounts.

27 88. Although active employees contributed in the form of payroll deductions towards the  
28

1 costs of retiree healthcare, they were not responsible for funding the full cost of the Retiree  
2 Healthcare Plan's ("RHC Plan") unfunded liabilities.

3 89. On information and belief, the City has developed an Annual Retirement Cost or  
4 "ARC" that incorporates the City's predicted normal cost of retiree health obligations and the cost of  
5 promised but unfunded benefits to current and future retirees (*i.e.* unfunded liabilities).

6 90. Beginning in or around 2009, the City imposed increasingly significant layoffs of its  
7 employees and further reduced wages of those that remained by as much as twelve percent of  
8 pensionable pay. As a result, the City's pay-as-you go method of funding its retiree health  
9 obligations became untenable as the amount of employee contributions to the ARC necessarily  
10 declined due to such layoffs and pay reductions. The City's actions further increased the pool of  
11 retirees and consequently its retiree health obligations, as employees opted to retire rather than be  
12 placed on lay-off or continue to work under significant pay reductions.

13 91. Measure B attempts to shift the City's obligation associated with previously-incurred  
14 and promised retiree health benefits onto its current employees. Measure B seeks to make current  
15 employees responsible not only for 50% of the normal cost of their annually-incurred retiree health  
16 obligations, but also for the City's unfunded liabilities with respect to all of its retiree healthcare  
17 obligations. (Measure B, § 1512-A(a) (making active employees responsible for contributing "a  
18 *minimum* of [fifty percent] of the cost of retiree healthcare, including both normal cost and unfunded  
19 liabilities").)

20 92. Upon information and belief, with respect to members of the Petitioner, such an  
21 obligation imposes an excise on current employee compensation for the payment of the City's  
22 general obligations.

23 93. Such excise is substantially greater than the amount of benefits each such employee is  
24 expected to receive under the RHC Plan. As a result, such employees are paying for benefits  
25 unassociated with their City service.

26 94. Measure B further attempts to set a framework to severely diminish the value of the  
27 "low cost plan" to which members are entitled upon retirement .  
28

1           95.     Measure B also purports to “unvest” the right to retiree health notwithstanding the fact  
2 that employee members of petitioner have directly contributed through payroll deduction to the cost  
3 of such benefits. (Measure B, Section 1512-A(b) (stating “[n]o retiree healthcare plan or benefit shall  
4 grant any vested right...”; providing City with right to “amend, change or terminate any [RHC P]lan  
5 provision”).) Such provision, as alleged below, is an unconstitutional taking and impairment of  
6 contract, and violates due process, as guaranteed by the California Constitution.

7           96.     Measure B also redefines the benefit provided under the RHP as “the medical plan  
8 which has the lowest monthly premium available to any active employee in either the Police and Fire  
9 Department Retirement Plan or [the System].” (Section 1512-A(c).) This effectively fixes employee  
10 benefits to the lowest cost plan City-wide, whether or not that plan was bargained for or imposed  
11 upon a union other than AFSCME by the City.

12           97.     As a result, Measure B reduces the expectations of Petitioner’s members by reducing  
13 the amount of Retiree health premium payment available to them upon retirement.

14           *Retroactive Shifting of Public Debt to a Small Class of Individuals*

15           98.     Measure B shifts a substantial burden onto current employees for the financing of the  
16 System’s, Plan’s, and the RHC Plan’s unfunded liabilities.

17           99.     Such unfunded liabilities represent the previously-incurred obligations of the City with  
18 respect to benefits earned by current and future retirees of the City.

19           100.    With respect to the System, under Measure B, employees who refuse to forego their  
20 vested right to their pension benefit must make “additional retirement contributions in increments of  
21 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to  
22 amortize any pension unfunded liabilities....” (Section 1506-A(b).)

23           101.    Prior to Measure B, the City was and has been obligated to pay for any such unfunded  
24 liabilities. Further, until the VEP is implemented, Section 1506-A of Measure B governs all  
25 members of the System, obligating them to shoulder the City’s debts related to the System’s  
26 unfunded liabilities.

27           102.    Similarly, if a court finds Section 1506-A(b) of Measure B to be “illegal, invalid or  
28



unenforceable” then the City is purportedly empowered to require employees to pay down the City’s obligations for the System’s unfunded liabilities. (Section 1514-A of Measure B.)

103. Measure B places on current employees the responsibility of funding the cost of their benefits in addition to the unfunded liabilities not associated with their own service, including the already-accrued retiree health benefits obligations and the benefits payable to current retirees.

104. Measure B requires a small class of individuals, namely current employees with respect to the RHC Plan and current employees who refuse to forego their vested benefits under the System’s VEP plan, to retroactively fund liabilities of the public.

105. Measure B improperly imposes on members an obligation to fund a portion of the City’s general obligations.

106. Measure B imposes severe retroactive liability on a limited class of parties that could not have anticipated such liability, and in a substantially disproportionate manner.

107. Under the California constitution such retroactive legislation deprives individuals of legitimate expectations and upsets settled transactions.

108. Retroactive lawmaking is of particular constitutional concern because of its use, as with Measure B, is a means of retribution against unpopular groups.

109. Measure B is further an improper imposition of public debt on a small group of individuals.

110. In that regard, Measure B is an unlawful retroactive law that violates the California Constitution’s takings and due process clauses, and such Constitution’s prohibition of *ex post facto* laws and bills of attainder.

## **VIII. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Unconstitutional Impairment of Contract (Cal. Const. Art. I § 9 and Cal. Civ. Code § 52.1<sup>3</sup>)**

111. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

<sup>3</sup> Plaintiff may sue in Superior Court for a violation of its members’ constitutional rights pursuant to Civil Code Sect. 52.1.

1           112. California's Constitution, Article I, section 9, prohibits the state and its  
2 instrumentalities, including the City, from passing a law that impairs the obligation of contracts  
3 ("Contracts Clause").

4           113. Modifications to public employee retirement plans affecting current employees must  
5 be reasonable under California's Contracts Clause. Changes can be reasonable only if (1) they bear  
6 some material relation to the theory of a pension system and its successful operation and (2) changes  
7 in a pension plan that result in a disadvantage to employee are accompanied by comparable new  
8 advantages.

9           114. Miscellaneous employees enjoy vested contractual rights to the System, Plan, their  
10 retirement benefits, and any enhancements implemented once they begin working with the City.

11           115. Measure B substantially impairs these rights without providing a comparable  
12 advantage.

13           116. Under California law, these principles apply to changes in the method of funding of  
14 pension systems, and such changes cannot be imposed on members to their disadvantage, when there  
15 is no corresponding advantage.

16           117. Measure B, and the funding mechanisms providing for reduction in wages and shifting  
17 of liabilities to a small class of individuals who derive no benefits from such liabilities, is contrary to  
18 the theory of a pension system.

19           118. Measure B interferes and impairs those contractual rights in a way that is  
20 unreasonable.

21           119. Measure B's provisions bear no material relation to the theory of a retirement system  
22 or its successful operation; they simply allow the City to escape from its obligation to provide its  
23 employees with these form of deferred compensation with which it previously enticed them into its  
24 employ.

25           120. Measure B's provisions harm the effected employees without providing them with any  
26 comparable advantage, commensurate benefit, or compensation.

27           121. Therefore, Measure B violates Article I, Sect. 9 of the California Constitution as it  
28 applies to existing plan participants and is unconstitutional.

**SECOND CAUSE OF ACTION**  
**Unconstitutional Bill of Attainder**  
(Cal. Const. Art. I § 9 and Cal. Civ. Code § 52.1)

122. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

123. California's Constitution, Article I, section 9 prohibits the state and its instrumentalities, including the City, from passing bills of attainder.

124. Measure B is a legislative act. It was initially promulgated and put to a vote of the electorate by the City Council, and it was then approved by the City's electorate.

125. Measure B exclusively targets and penalizes current and future City employees ("public employees") for harsher treatment than other residents of the City.

126. Measure B penalizes current City employees by imposing an excise on them, unless such employees agree to forego their Constitutionally-protected rights to receive their full Pension benefit.

127. Such excise, consisting of up to 16% of their salary, is a severe penalty, and constitutes punishment.

128. Such excise inflicts punishment on this small class of individuals by subjecting them to adverse economic treatment. Measure B further punishes such employees by imposing on them a "poison pill" provision whereby if they seek to enforce their Constitutionally-protected right to be free from Bills of Attainder and other unconstitutional treatment, they are further penalized.

129. Measure B is therefore is an unlawful Bill of Attainder.

**THIRD CAUSE OF ACTION**  
**Unconstitutional Taking of Private Property**  
(Cal. Const. Art. I § 19 and Cal. Civ. Code § 52.1)

130. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

131. A public entity may not take private property for public use in the absence of just compensation. (Cal. Const. art I § 19.) Nor may a public entity pass regulations having the effect of depriving individuals of their property.

1           132. Miscellaneous employees enjoy vested contractual and property rights under the  
2 System, once they begin work for the City.

3           133. Measure B is a taking of such rights.

4           134. Similarly, retirement benefits promised in order to induce employment with the City  
5 are a form of deferred compensation. Measure B constitutes a taking of such property.

6           135. Measure B has a drastic fiscal impact on public employees because it significantly  
7 abridges their vested right to receive certain retirement benefits.

8           136. Furthermore, Measure B constitutes an unconstitutional taking because it divests  
9 public employees' salaries to finance the System's unfunded liabilities and employee retirement  
10 plans, without providing such employees with just compensation for this divestiture.

11           137. Measure B seizes a greater portion of their salaries to finance the City's unfunded  
12 liabilities related to pension and retiree health benefits. In other words, because Measure B seizes  
13 wages in order to pay for the previously-incurred retiree health and Pension obligations associated  
14 with others, it constitutes an unconstitutional taking.

15           138. Although Measure B significantly infringes upon the vested property rights of plaintiff  
16 and those it represents, it does not provide them with any form of comparative advantage. Therefore,  
17 it amounts to an unconstitutional taking of private property for a public purpose without just  
18 compensation.

19           139. Measure B further constitutes an unlawful retroactive law in violation of the California  
20 Constitution's takings clause.

21                                   **FOURTH CAUSE OF ACTION**  
22                                   **Unconstitutional Taking of**  
23                                   **Private Property Without Due Process**  
                                  (Cal. Const. art. I § 7 and Cal. Civ. Code § 52.1)

24           140. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth  
25 fully herein.

26           141. California's Constitution, Article I, section 7, provides "A person may not be  
27 deprived of ... property without due process of law."

28           142. Miscellaneous employees enjoy vested contractual and property rights to the pension

1 benefits set forth under the System, and any enhancements made during their term of employment  
2 with the City. This includes the right to a COLA and retiree healthcare benefits.

3 143. Measure B violates the members' rights to substantive due process guaranteed by the  
4 California constitution by taking their vested property rights without affording them a comparable  
5 advantage or commensurate benefit or compensation.

6 144. Measure B further constitutes an unlawful retroactive law in violation of the California  
7 Constitution's Due Process clause.

8 **FIFTH CAUSE OF ACTION**  
9 **Violation of California's Pension Protection Act**  
(Cal. Const. art. XVI § 17 and Cal. Civ. Code § 52.1)

10 145. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth  
11 fully herein.

12 146. The California Constitution gives public sector pension or retirement systems the "sole  
13 and exclusive fiduciary responsibility" over the system's assets and its administration. (Cal. Const.  
14 art. XVI §§ 17, 17(a).) It also holds that system assets are "trust funds and shall be held for the  
15 exclusive purposes of providing benefits to participants in the pension or retirement system and their  
16 beneficiaries...." (Cal. Const. art. XVI § 17(a).)

17 147. The California Constitution states that "the retirement board of a public pension or  
18 retirement system shall have plenary authority and fiduciary responsibility for investment of moneys  
19 and administration of the system..." subject to specified conditions. (Cal. Const. art XVI § 17.)

20 148. It further provides that the Board "shall have the sole and exclusive fiduciary  
21 responsibility over the assets of the public pension or retirement system[,] and "it shall also have the  
22 sole and exclusive responsibility to administer the [S]ystem in a manner that will assure prompt  
23 delivery of benefits and related services to the participants and their beneficiaries." Furthermore, the  
24 "assets of [the System] are trust funds and shall be held for the exclusive purposes of providing  
25 benefits to participants in the [System] and their beneficiaries and defraying reasonable expenses of  
26 administering the [S]ystem." (Cal. Const. art XVI § 17(a).)

27 149. A Retirement Board's "duty to its participants and their beneficiaries shall take  
28

1 precedence over any other duty.” (Cal. Const. art XVI § 17(b).) Further, the Board’s “exclusive  
2 fiduciary responsibilit[y] ... to provide for actuarial services in order to assure the competency of the  
3 assets of the” System. (Cal. Const. art XVI § 17(e). *See also* SJMC § 3.28.350(B).)

4 150. The City’s Municipal Code grants real party in interest, the Retirement Board,  
5 exclusive control over investing and administering of the retirement fund. (SJMC § 3.28.310.)

6 151. The Code charges the Board with investing and reinvesting fund assets, which are  
7 “held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries  
8 and defraying reasonable expenses of administering the plan.” (SJMC § 3.28.350(A).)

9 152. Amongst its other responsibilities, the Board also determines employee eligibility for  
10 receipt of retirement benefits, the calculation of employer and member contributions, and the  
11 distribution of benefits to retirees.

12 153. The California Constitution also requires that the “members of the retirement board of  
13 a public pension or retirement system shall discharge their duties with respect to the system solely in  
14 the interest of, and for the exclusive purposes of providing benefits to, participants and their  
15 beneficiaries, minimizing employer contributions thereto, and defraying reasonable administrative  
16 expenses of administering the system.” (Cal. Const. art. XVI § 17(a).) Also, a retirement board’s  
17 duty to its participants and their beneficiaries shall take precedence over any other duty.” (Cal. Const.  
18 art. XVI § 17(b).)

19 154. Measure B requires that when the Necessary Party in Interest adopts retirement plans  
20 under the Federated System, it “minimize any risk to the City and its residents...” (Section 1513-  
21 A(a).) Requiring that Necessary Party in Interest consider the risk of such a plan to any other party  
22 besides its participants and beneficiaries directly contradicts its primary fiduciary responsibility to  
23 Plan participants and beneficiaries.

24 155. Measure B requires that all “plans adopted pursuant to the Act ... minimize any risk to  
25 the City and its residents ....” (Section 1513-A(a).) Again, this command contravenes the Board’s  
26 primary fiduciary duty to Plan participants and beneficiaries.

27 156. Section 1513-A of Measure B sets forth certain actuarial requirements that usurp the  
28 Board’s plenary power and exclusive fiduciary responsibility, as mandated by California’s

1 Constitution, to provide for actuarial services to ensure the competency of the assets” of the System.

2 157. For these reasons Measure B is in conflict with and preempted by the California  
3 Constitution.

#### 4 **SIXTH CAUSE OF ACTION**

##### 5 **Violation of Constitutional Right to Petition**

(Cal. Const. art. I §§ 2, 3 and Cal. Civ. Code § 52.1)

6 158. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth  
7 fully herein.

8 159. Miscellaneous employees enjoy vested contractual rights to the Plan, its benefits, and  
9 any enhancements once they begin working with the City. This includes the right to pension  
10 payments with a COLA and retiree healthcare benefits.

11 160. “The people have the right to ... petition government for redress of grievances....”  
12 (Cal. Const. art. I § 3.)

13 161. Section 1514-A of Measure B holds that if Section 1506-A(b) “is determined to  
14 illegal, invalid or unenforceable to Current Employees[,]” current employees’ salaries shall be  
15 reduced by “an equivalent amount of savings.” The penalty Section 1514-A imposes for a successful  
16 challenge to Section 1506-A(b) is equally detrimental to members as the burden imposed upon them  
17 by Section 1506-A(b) itself.

18 162. The penalty imposed by Measure B for successfully mounting a legal challenge to  
19 Measure B is unrelated to the theory of a pension system and violates the Constitutionally protected  
20 right to petition.

21 163. Measure B impermissibly imposes a cost or risk upon the exercise of the right to  
22 petition the courts for redress, and its purpose and effect is to chill the assertion of constitutional  
23 rights by penalizing those who choose to exercise them.

24 164. Section 1514-A of Measure B deters members from challenging Measure B by  
25 imposing an unreasonable, burdensome, legally unauthorized, and unrelated penalty for successfully  
26 invoking the Constitutional right to petition the courts.

27 165. Measure B discourages the exercise of a fundamental right and therefore violates Cal.  
28 Constitution Article I, Sections 2 and 3.

**SEVENTH CAUSE OF ACTION**  
**Illegal *Ultra Vires* Tax, Fee or Assessment**  
(Cal. Const. Art. I, § 7 & Civ. Code § 52.1)

166. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

167. Measure B imposes on current and future employees the obligation to Fund the city's general obligation for the unfunded liabilities associated with its pension System and Retiree Healthcare Plan.

168. Measure B accomplishes this by imposing an excise on City employee wages.

169. Rather than impose upon employees the cost of their own, incurred benefits, Measure B imposes on employees an excise to raise funds for the payment and funding of general obligations of the City, namely the already-incurred liabilities of future retirees and the benefits provided to current retirees.

170. Under California law, permissible fees must be related to the overall cost of the governmental regulation. A fee, excise or tax may not exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.

171. The excises imposed by Measure B are excessive as they are not related to the cost of the individual employees' benefits but also subsidize the City's own, previously incurred, obligations.

172. The excises further offend principles of equal protection under the California Constitution.

173. Statutes imposing fees, excises or taxes violate the California Constitution's equal protection clause if they select one particular class of persons for a species of taxation without rational basis.

174. Measure B violates the California Constitution's equal protection provision to the extent it imposes liability upon one person for the support of another not obligated to support such person. Thus, there is no rational basis for levying the excise exclusively upon members.

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**EIGHTH CAUSE OF ACTION**  
**Promissory Estoppel and Equitable Estoppel**

175. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

176. Promissory estoppel serves as consideration in order to enforce a bargained-for agreement. That is, the reliance on a promise made by one party serves as a basis to enforce such promise in law or equity.

177. Estoppel applies to claims against the government, particularly where the application of the doctrine would further public policies and prevent injustice.

178. The City, through its Municipal Code, Charter and communications with employees and their labor organizations represented that employees were not liable to finance public debt, or the System's or RHC Plan's unfunded liabilities.

179. The City further represented that employees would earn benefits and have the right to receive a certain level of benefits. In reliance thereon, such members and employees accepted and continued in employment, and made payroll contributions of their own into the System and RHC Plan.

180. The City should have reasonably expected these promises to encourage the miscellaneous employees to accept employment with it and continue working for it until they qualified for service retirement.

181. The City violated these promises when it adopted Measure B by reducing benefits and shifted the burden of financing its unfunded liabilities upon miscellaneous employees.

**NINTH CAUSE OF ACTION**  
**REQUEST FOR DECLARTORY RELIEF**  
(Code of Civ. Pro. § 1060)

182. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

183. Measure B requires that the City Council adopt ordinances to "implement and effectuate [its] provisions...." Unless relief is granted, Measure B becomes effective immediately and sets as a goal that "such ordinances shall become effective no later than September 30, 2012."

1 184. An actual controversy has arisen and now exists between Plaintiff and Defendants as  
2 to Defendants' duties with respect to implementation of Measure B.

3 185. Plaintiff contends that Measure B violates the "Contracts Clause" and prohibition on  
4 "Bills of Attainder" (Cal. Const. art. I § 9), "Taking Clause" (Cal. Const. art. I § 19), "Due Process  
5 Clause" (Cal. Const. art. I § 7), "Pension Protection Act" (Cal. Const. Art. XVI § 17), prohibition on  
6 unlawful excises (Cal. Const. art. I § 7), and right to petition the courts (Cal. Const. art. I §§ 1, 2)  
7 pursuant to the state Constitution.

8 186. Plaintiff is informed and believes that the City disputes the allegations contained  
9 within this Complaint and Petition and contends that it has a legal duty to implement Measure B as a  
10 result of its adoption by the voters of Defendant City.

11 187. Plaintiff desires a judicial determination of their rights and a declaration of whether  
12 Measure B violates the aforementioned sections of the California Constitution, the City Charter,  
13 SJMC, and/or provisions of the Plan.

14 188. A judicial determination is necessary and proper at this time under these  
15 circumstances in order to determine the duties and obligations of the parties with respect to  
16 Measure B.

17 **TENTH CAUSE OF ACTION**  
18 **REQUEST FOR INJUNCTIVE RELIEF**  
19 (Code of Civ. Pro. §§ 525, 526, and 526(a))

20 189. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth  
21 fully herein.

22 190. Plaintiff and groups, residents, registered voters, and taxpayers of the City will suffer  
23 irreparable harm as a result of the City's expenditure of staff time and taxpayer funds in connection  
24 with implementation of Measure B.

25 191. Furthermore, members represented by AFSCME will suffer irreparable harm from the  
26 constitutional violations at issue.

27 192. Plaintiff can demonstrate a high-likelihood of success on the merits of its claim that  
28 Measure B violates the aforementioned provisions of the California Constitution, the City Charter,  
Municipal Code, and agreements between the parties.

1           193. Plaintiff has no plain, speedy, or adequate remedy at law.

2           194. Plaintiff's members will suffer irreparable harm in the event the City is not enjoined  
3 from implementing Measure B.

4           195. The injunctive relief Plaintiff seeks is prohibitory in nature, and it seeks to restrain  
5 and/or prohibit Defendant City from taking any steps to implement, enforce, or otherwise give effect  
6 to Measure B.

7                                   **ELEVENTH CAUSE OF ACTION**  
8                                   **PETITION FOR WRIT OF MANDATE**  
                                  (Code of Civ. Pro. § 1085)

9           196. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth  
10 fully herein.

11           197. Respondent City, and those public officers and employees acting by and through its  
12 authority — including Necessary Party in Interest — have a clear, present, and ministerial duty to  
13 implement only those ordinances and regulations that are not in conflict with the California  
14 Constitution. Respondent City has failed to perform its duty to comply with those requirements to  
15 the extent it intends to implement the provisions of Measure B.

16           198. Measure B violates Const. art. I, sects. 1, 2, 7, 9, 19; Const. art. XVI, sect. 17 of the  
17 California Constitution; the City Charter; the SJMC; and the terms of the Plan.

18           199. Petitioner is beneficially interested in a peremptory writ of mandate to compel  
19 Respondent City, and those public officers and employees acting by and through its authority, to  
20 perform their duties imposed by law, including refraining from implementing the provisions of  
21 Measure B.

22           200. Plaintiff has no plain, speedy or adequate remedy at law.

23                                   **PRAYER FOR RELIEF**

24           WHEREFORE, Plaintiff-Petitioner prays for the following relief:

25           1. A declaration that Measure B cannot be applied to the AFSCME members working for the  
26 City on or before June 5, 2012;

27           2. A declaration ordering defendants and respondents to not apply the terms of Measure B  
28

1 against petitioner-plaintiff's members currently in the City's employ, and restoring to such employees  
2 all rights and benefits purportedly abridged by Measure B.

3 3. A permanent injunction prohibiting the defendants and petitioners from applying or  
4 otherwise enforcing any part of Measure B against members working for the City before June 5,  
5 2012;

6 4. A peremptory writ mandating defendants and respondents and the Board to apply all Plan  
7 provisions, rights and benefits in effect before June 5, 2012, to AFSCME members and prohibiting  
8 the application or implementation of Measure B to them;

9 5. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5,  
10 Government Code Section 800, or otherwise;

11 6. For costs of suit herein incurred; and,

12 7. For such costs and further relief as the Court deems just and proper.

13  
14 Dated: July 5, 2012

BEESON, TAYER & BODINE, APC

15  
16 By: 

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AFSCME LOCAL 101